

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Arvind Bhakta,

Petitioners-Appellants,

v.

Bremer County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 11-09-0139
Parcel No. 31-000-19-0846**

On November 28, 2011, the above captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board under Iowa Code sections 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant Arvind Bhakta designated Brandon Fisher, of Real Estate Tax Consultants, LP (RETC LP), Houston, Texas, as his representative. On November 8, 2011, Fisher sent a letter to this Board requesting the hearing be changed to a written consideration. The Bremer County Board of Review designated County Attorney Kasey Wadding as its representative. Bhakta did not provide any new evidence in addition to the exhibits in the certified record. The Board of Review provided a two-page income approach and cover letter. The Appeal Board having reviewed the entire record and being fully advised, finds:

Findings of Fact

Arvind Bhakta, owner of RR LC, Red Fox Inn (Red Fox), a commercially classified property located at 1900 Heritage Way, Waverly, Iowa, appeals the Bremer County Board of Review decision regarding the 2011 property assessment. The January 1, 2011, assessment is allocated as follows: \$127,890 in land value and \$1,536,300 in improvement value for a total assessment of \$1,664,190.

The subject motel is four buildings as follows:

Improvement	Gross Building Area (GBA)	Year Built	Other
Building 1	27,708	1973	1044 sq. ft. canopy
Building 2	20,924 ¹	1973	1623 sq. ft. canopy
Building 3	5688	1979	None
Building 4	29,120	1979	9000 sq.ft. basement
Total GBA	83,440 ²		

All four buildings are rated as normal condition and have 20% functional obsolescence for layout; 45% economic obsolescence; and 30% physical obsolescence. All have brick veneer.

Notes on the property record card indicate Building 1 is a two-story structure that has 48 rooms with several rooms converted to doubles, 2800 square feet of common area and an average unit size of 518 square feet. Building 2 is a two-story structure with two, one-story additions. It has a kitchen, restaurant, dining area, and lounge on the main floor; and banquet rooms with kitchen on the second floor. Building 3 is a one-story structure and has a 1000 square-foot pool, hot tub, and bar with seating area. Building 4 is a two-story structure with 9000 square feet of basement. It has seventy-two rooms total, with sixteen rooms in the basement and an elevator.

Other improvements include 175,500 square feet of asphalt paving installed between 1973 and 1974; four, fifteen-foot yard lights and four, twenty-five foot yard lights; a 460 square-foot, metal shed built in 1973; a 99 square-foot, frame shed built in 1999; a 936 square-foot metal garage; a 13,440 square-foot asphalt tennis court; and 464 linear feet of ten-foot high chain-link fencing. The site is 8.27 acres.

Bahkta protested his assessment to the Bremer County Board of Review. On the protest he contended his property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), claiming the actual value is \$1,206,450.

¹ According to the property record card, this is a two-story building with a 9912 square-foot base, a 900 square-foot addition to the first floor restaurant, and a 200 square-foot, one-story addition on the second floor kitchen area over the loading docks.

² An Income Approach analysis completed by Brandon Fisher for Red Fox indicates "square footage" of 54,114. It is unknown where this number was derived from or what the number represents (rooms only, or total building area including pool/restaurant areas, etc.)

The Board of Review denied the protest.

Bahkta then appealed to this Board reasserting his claim and correct value.

Bahkta relied solely on the evidence submitted to the Board of Review. He did not offer any evidence of comparable sales for a market approach to value. The sales comparison approach is the required and preferred method of valuing property for tax assessment purposes. Only if the value cannot readily be determined using comparable sales, may “other factors” such as the income or cost approaches be considered. There is nothing in the record to indicate sales were not available for analysis or available sales resulted in an unreliable analysis.

While Bahkta failed to consider the sales comparison approach, Brandon Fisher submitted an Income Approach analysis comprised of two summary pages; income statements for the twelve months ending December 31, 2007, through December 31, 2010; four listings to establish Iowa hospitality capitalization rates; and room receipts for 2007 through 2010.

Fisher identified the subject property’s 2010 room rental income as \$645,898. He noted on the income approach this is down 38.46% from 2008. He identified other income of \$59,291, for a total 2010 income of \$705,189. We note he did not reduce the total income for any vacancy or collection loss. Additionally, we note that he does not offer any evidence indicating the subject property income is reflective of market income for similar properties.

He identified total expenses, less rent expense (mortgage at \$119,700), franchise fees (\$19,915), and bad debt (\$8167), for an adjusted total expense of \$557,734. This results in a net operating income (NOI), according to Fisher, of \$147,455. However, it is not typical for the mortgage expense to be included in the income approach. Operating expenses do not include mortgage payments, income and capital gains taxes, and loan origination fees.

Fisher concludes a capitalization rate (cap rate) of 11%. He based this on four listings of motels in Iowa which had cap rates ranging from 7.20% to 12%. The Board of Review did not dispute the cap rate of 11% submitted by Fisher.

Fisher's income analysis for Red Fox is summarized as follows:

Total Income \$705,189 - Total Expenses \$557,734 = NOI \$147,455

NOI \$147,455 / 11% cap rate = \$1,340,500 total indicated value

\$1,340,500 – Business value (10%) \$134,050 = Indicated value of real estate \$1,206,450

There is no explanation provided for the reduction of 10% for business value. Fisher does not explain how 10% was arrived at and it is atypical methodology to deduct the business value in the development of the income approach for ad valorem purposes.

On behalf of the Board of Review, Bremer County Assessor Jean Keller submitted a three-page letter received by this Board on November 10, 2011. Keller notes the income analysis prepared by Fisher reflects only the 2010 operating statement although he submitted income statements for the years 2007 through 2010. In her opinion, this skews the results. She asserts a potential buyer would consider several years of operating statements to determine the value of a property, not just the current year. While we recognize a buyer would be interested in the income stream history; we also note the information provided indicates the income stream has not been stable for the last four years. If the market was stabilized, it could be reasonable to consider multiple years of income and expenses. However, in this factual instance, it is clear by the data presented that there has been a decline in income for the last two years. There is nothing in the record explaining the reason for the decline in revenues; however, we assume it is due to a general decline in the economy.

Keller's analysis considers all of the income data submitted by Fisher and concludes a four-year average of \$904,344. Likewise, she concludes a four-year average of total expenses of \$614,000.

Keller's income analysis for Red Fox is summarized as follows:

Total Average Income \$904,344 – Total Average Expense \$614,000 = NOI \$290,344

NOI \$290,344 / 11% cap rate = \$2,639,490 total indicated value

\$2,639,490 - Business value (10%) \$263,949 = Indicated value of real estate \$2,375,541

We do not consider Keller's income analysis to be reflective of how an investor would consider the current value of the subject property, when the income clearly would not be considered stable for the last four years. We based this opinion on a 22% increase in total income from 2007 to 2008, followed by a nearly 44% decrease in total income from 2008 to 2009. Income from years 2009 through 2010 indicate a trend toward some stability with only minor differences between the total incomes reported.

Additionally, we note Keller simply replicated Fisher's analysis and thus replicated the same errors of deducting the mortgage as an expense and deducting the business value from the total value.

The Board of Review did not provide any evidence of value based on market sales of other hotel/motel properties; however, the burden lies with Bahkta.

While we find Fisher's income analysis to be somewhat deficient in that errors were made by including the mortgage as an operating expense, by deducting the business value, and by failing to clearly demonstrate that the subject's income stream is reflective of market income. More important, there is no explanation for why comparable sales were not analyzed or why this analysis would not be reliable. Other factors (income or cost approaches) may be considered only if the value can not be readily determined using comparable sales.

Reviewing all the evidence, we find the preponderance of evidence does not support Bahkta's claim that the property is over-assessed. The burden of proof lies with Bahkta and he failed to show that the property was assessed for more than authorized by law by the preferred method of sales; or that sales were lacking allowing for other factors to be considered.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). There is a statutory preference for establishing market values using sales of comparable properties. *Compiano v. Bd. of Review of Polk County*, 771 N.W.2d 392 (Iowa 2009); *Soifer v. Floyd County Board of Review*, 759 N.W.2d 775, 779 (Iowa 2009). To be comparable, the property must

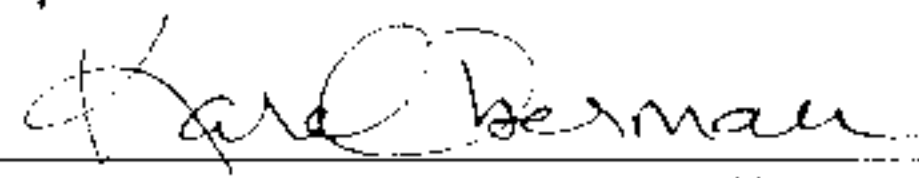
only be similar, not identical. *Bartlett & Co. Grain v. Bd. of Review*, 253 N.W.2d 86, 93 (Iowa 1977) (citing *Redfield v. Iowa State Highway Comm'n*, 99 N.W.2d 413, 418 (Iowa 1959)).

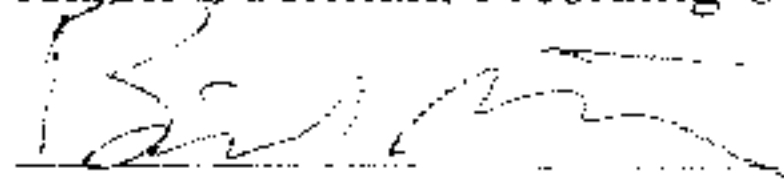
Before relying on the income approach or other factors, a party or witness must first establish that comparable sales are not available to value the property. *Compiano*, 771 N.W.2d at 397-99: § 441.21(2). Bhakta did not analyze evidence of comparable sales or did not show that evidence of comparable sales was not available. While we recognize that commercial sale transactions are driven largely by income expectations, the Iowa Legislature and Iowa Supreme Court both indicate that evidence of comparable sales must be addressed before considering the income approach to value or other factors. Bhakta's evidence does not show that the property is assessed for more than authorized by law.

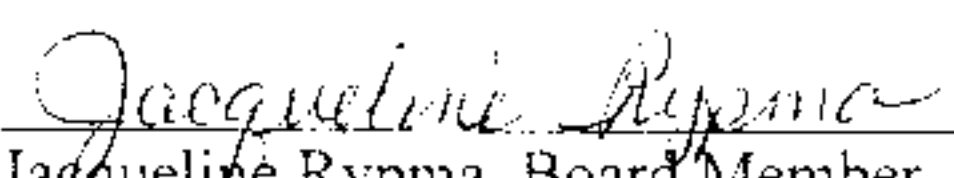
Therefore, we affirm the assessment of Arvind Bhakta's property known as the RR LC, Red Fox Inn, determined by the Bremer County Board of Review, as of January 1, 2011.

THE APPEAL BOARD ORDERS the assessment of Arvind Bhakta's property known as the RR LC, Red Fox Inn located at 1900 Heritage Way, Waverly, Iowa, of \$1,664,190, as of January 1, 2011, set by Bremer County Board of Review, is affirmed.

Dated this 31 day of January, 2012.


Karen Oberman, Presiding Officer


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>1-27</u> , 2012	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	